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OGC Has Reviewed

Chief, NEA

21 January 1953

Office of the General Counsel

Violations of International Copyrights

REFERENCE: Memorandum from Chief, NEA to General Counsel dated 26 September 1952
Subject: Request for Information and Guidance re Copyrights.

1. You have requested our advice in connection with certain problems respecting the international protection of copyrighted materials. You state that questions have arisen in connection with a project activity in India centered about a writers' group engaged in the reproduction of such materials for propaganda distribution.
2. Our discussion of the questions presented is not directed specifically to the geographic area with which you are concerned since the considerations involved are more widely applicable.
3. Underlying the problems you raise is, of course, a necessary assumption of the existence of effective copyright protection for the materials your group proposes to reproduce. In each instance the nature and the extent of protection will be determined by the law of the country where protection is sought, without regard to the extent and mode of protection in the country of original publication. I Ladas, The International Protection of Literary and Artistic Property, 364 (MacMillan Company, 1938). Accordingly, it is not the law of the United States but the law of the country of reproduction with which you must concern yourself in the event you anticipate reproduction of copyrighted materials. The protection of claims to copyright finds its source in either the internal law of the country of reproduction or the International Copyright Convention to which the country of reproduction may be a participating signatory.
4. It is impossible for us at this time to assess the likelihood of an assertion of the right to protection without greater knowledge of local circumstances. Nor can we profess to advise you whether a particular publication would constitute an infringement of copyright under the laws of a foreign nation. To do so would require familiarization with foreign statute and case law beyond the scope of this office to undertake. We would be pleased, however, to render such assistance as we can and, where necessary, to obtain outside counsel for expert advice on specific problems.
5. Accordingly, your field activity must furnish you with more exact information on the existence of copyright and must assess for you the likelihood that the author whose works are protected would

seek to assert this protection. Needless to say, if an infringement of a protected claim to copyright is committed, legal recourse will lie for compensatory damages, civil injunction or criminal penalties.

6. Paragraphs 2, 3, and 4 of your memorandum ask more specific questions all of which are related to the determination of whether in fact an infringement has occurred. As a general rule reproduction of protected copyrighted materials is prohibited even though full credit is given the source and proprietary interest. The following considerations may be pertinent with respect to the fundamental problem of what constitutes an infringement.

a. Notice of copyright does not serve to protect the expression of ideas or thoughts or the ideas or thoughts themselves, but rather, to the extent of originality, protects the order or combination of ideas. Therefore, only the original part of a publication is protected by copyright, and no infringement can result from the reproduction of non-original matter. A rule or reason must apply in determining whether a mere change of words or paraphrasing will prevent infringement when the original order or combination of ideas is reproduced.

b. The similarity or identity between two works does not of itself make one an infringement of the other. The law does not prohibit independent arrival at the exact combination of ideas or expressions which has been copyrighted. Actual copying must be made for an infringement to exist, for mere priority in time does not confer the benefits of copyright.

c. Copying which is an infringement must be something which ordinary observation would cause to be recognized as having been taken from the work of another. Attention should be focused upon quality and value in determining whether a substantial part of what is copyrighted has been taken directly or indirectly. If this is affirmatively answered, difference in form, size, details, difference in medium of expression, or variation in purpose become immaterial. The prospective use of copied material is similarly of no consequence.

d. The exclusive right of reproduction is circumscribed by the doctrine of "fair use." The copyright holder on publishing his work is presumed to intend certain uses of his work depending upon its nature. Such use is technically forbidden by law, but is allowed as reasonable and customary and is presumed to have been tacitly intended by the copyright owner.

1. Fair quotations for the purpose of review of a work constitute "fair use." Necessarily, the work may not be substantially reproduced or attributed to another author. In each case it is a question of fact whether the quotation is fair, depending upon the nature and purpose of the quotation, the quantity quoted and the degree to which the quotation may prejudice or supersede the original work.

2. It is presumed that utilitarian use of materials as a source of information is intended when such materials are the result of mechanical rather than imaginative effort. Copying of the material is permissible although the arrangement and selection may not be duplicated unless the nature of the work makes the latter impossible.

3. It is entirely proper to take suggestions from previous works. The original work may stimulate new creative thought. Development of a creative suggestion would constitute fair use.

4. A brief synopsis of a copyrighted work is fair use, whether given in a review or as separate material.

7. This office can well appreciate the extent to which timeliness affects the worth of your project activities. If it is essential to the success of its activities that your group publish without prior consent, it must be prepared to sustain the risk of infringement proceedings. Your memorandum suggests that a great deal of your work may not constitute infringement inasmuch as it is edited, paraphrased, and rewritten to suit your peculiar purposes. Assuming further that an author holding the proprietary interest in a copyright seeks to assert a claim to protection, there necessarily will be genuine legal questions involved in determining against whom the remedy lies and from a practical standpoint whether the remedy is worth anything. This is particularly so because it appears that the relationship of your group with this Agency cannot be traced and many of the functions of your group are non-repetitive.

8. This office would be pleased to discuss with you any further specific problems which may arise.

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Distribution -

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